

EASTERN CARIBBEAN SUPREME COURT  
FEDERATION OF ST. CHRISTOPHER AND NEVIS  
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE  
(CIVIL)

SUIT NO: NEVHCV2016/0011

**BETWEEN:**

The Islamic Organization of St. Kitts and Nevis Inc  
formerly known as  
The Nevis Islamic Organization Bath Village

Claimant

and

Abdul Karim Ahmed

Defendant

**Appearances:**

Ms. Gillian Andre' for the Claimant

Ms. Karilyn Merchant for the Defendant

2015: 25 May, 27 May  
2016: 28 June

**JUDGMENT**

**Williams J.**

- (1) By an Amended Fixed date Claim Form dated the 1<sup>st</sup> April 2016, the Claimant claims the following orders:
- (X) (1) A declaration that the Claimant is a beneficiary of the property held on Trust known as "All that parcel of land situated at Bath Village in the Parish of St. John registered at Liber CR, Volume 82 Folio 1634 to 1641 in the Registry Book of Deeds of the Nevis Circuit"
- (2) A declaration that the Defendant be removed as a Trustee of the Organization and new Trustees be appointed by the Court.
- (3) That the Claimant and the Defendant do execute an Instrument of Transfer thereby transferring the said property to the Trustees

- (4) That in the event of the Defendant refusing and/ or failing to execute the said instrument of transfer, the Registrar of the Supreme Court be authorised to execute the said transfer.
- That the Defendant return the following documents belonging to the Organization
- (a) The Constitution
  - (b) Used and unused cheque books
  - (c) Bank statements
  - (d) Receipts
- [5] The Claimant also claims
- 1) Damages
  - 2) Interest on Damages
  - 3) Costs
  - 4) Such further relief or other relief as the Court thinks just
- [6] Mr. Vincent Adams on behalf of the Claimant has also filed an Affidavit in support of the Amended Fixed date claim dated 18<sup>th</sup> March 2016.
- [7] The Defendant filed on the 7<sup>th</sup> March 2016 a Notice of Application to strike out the claim on the following grounds
- a) that the Defendant lacks the requisita locus standi to bring the claim in the name and on behalf of the Claimant.
  - b) that the claim is defective and does not comply with CPR Part 8.
  - c) that the allegations contained in the Defendant's affidavit are without merit
  - d) that the Deponent/ Claimant has not shown a sufficient legal basis on which the Defendant ought to be removed.

[3] **Background facts**

This claim is brought by Mr. Vincent Adams purportedly in his capacity as Secretary and a beneficiary of the Islamic Organization of St. Kitts and Nevis Inc. formerly known as The Nevis Islamic Organization.

[4] On the 1<sup>st</sup> October 2003, a Deed of Conveyance was executed between Vaughn Tyson of Stoney Hill, Nevis and Mohammed Ali, and Abdul Karim Ahmed of Nevis as Trustees of the Islamic Organization whereby a plot of land of 5000 square feet situated at Bath Village was transferred to the said Trustees.

[5] The property in question is the location of a Mosque used by the Organization for prayer and related matters.

[6] On the 10<sup>th</sup> April 2007, a Constitution governing the affairs of the Islamic Organization of St. Kitts and Nevis was filed at the Registry of Companies. Mr. Ahmed and Mr. Mohammed Ali were the Trustees and Directors of the Organization.

[7] On the 31<sup>st</sup> August 2009, Mr Ali tendered a letter of resignation (AKA 2) and in 2010 Mr Ahmed left the Jurisdiction for approximately five years and returned in 2014.

[8] There was no election of a new President for the Organization and the Defendant continued to perform the functions of a Trustee of the Organization.

[9] On the 7<sup>th</sup> July 2015, the Defendant and one Janger Williams as Secretary for the Organization presented a Resolution for opening a Bank account at Scotia Bank, Main Street, Nevis to carry out the routine banking transaction of the Organization.

[10] On the 21<sup>st</sup> October 2015 another special resolution signed by the Defendant as Trustee and Vice President and another person Ayesha Ahmed as Secretary was presented by publication in the newspaper stating that the company be wound up voluntarily and the Mosque Church be closed with immediate effect and the property be donated to another Organization with similar objectives.

- [11] On the 2<sup>nd</sup> November 2015, a Notice of Change of Directors was signed and filed by Vincent Adams as Secretary of the Company removing the Defendant as Director and appointing three new Directors (Exhibit IOSKN 7)
- [12] In November 2015, the Defendant caused to be published in the St. Kitts and Nevis Observer a Notice that the Company will be voluntarily wound up and that the Mosque be closed with immediate effect and that the property be donated or sold to another Organization (Exhibit IOSKN 8)
- [13] It is against this backdrop, that the Applicant/ Defendant has filed a Notice of Application to strike out claim dated 7<sup>th</sup> March 2016. The grounds of the Application are,
- 1) That CPR rule 26.3 (1) (b) sets out that the Court may strike out a statement of case if it does not disclose any reasonable ground for bringing the claim.
  - 2) The current claim was filed by way of Fixed Date Claim Form on the 12<sup>th</sup> January 2016 and the Claimant in the matter is The Nevis Islamic Organization of St. Kitts and Nevis inc.; a company duly incorporated on the 10<sup>th</sup> April 2007.
  - 3) The Affidavit of Vincent Adams dated the 12<sup>th</sup> January 2016 refers to and exhibits documents relating to the Islamic Organization of St. Kitts and Nevis Inc.; a company incorporated under the Companies Ordinance of Nevis.
  - 4) That a search of the Companies Registry Nevis disclose~~s~~ that the Islamic Organization of St. Kitts and Nevis is not in good standing.
  - 5) That the Deed of Conveyance refers to the Nevis Islamic Organization of Bath Village, Nevis.
  - 6) That the Claim is defective and cannot succeed in its current form since the Claimant has failed to show on what basis should any Property be transferred to the Claimant Company.
  - 7) That the statement of case is an abuse of the process of the Court and is likely obstruct to the just disposal of the Proceedings.
  - 8) That the Deponent of the Affidavit in support of the claim has no standing to bring the said claim.

9) That the claim, is frivolous and vexalious.

10) This matter was heard on the 23<sup>rd</sup> and 27<sup>th</sup> May 2016. There was no oral testimony. Both Counsels made concise oral submissions and relied on their written submissions.

**[14] The Issues**

The following issues arise for determination by the Court.

- 1) Whether the Deponent is a bona fide beneficiary of the Claimant Organization.
- 2) Whether the Defendant should be removed as a Trustee of the Organization for breach of Trust and a new trustee be appointed.
- 3) Whether the Deponent Vincent Adams has the locus standi to bring the Claimant Bar in the name and on behalf of the Claimant.
- 4) Whether the claim is defective and not in compliance with the CPR Part 8
- 5) Whether the Court should strike out the Claimant's statement of case as disclosing no reasonable ground for bringing the claim and is an abuse of process.
- 6) Whether the Court can appoint or remove a trustee under the inherent Jurisdiction of the Court.

**[15] Issue 1**

**Whether the Deponent is a bona fide beneficiary of the Claimant Organization.**

- [16] The Constitution of the Islamic Organization of St. Kitts and Nevis was filed at the Registry of Companies on the 10<sup>th</sup> April 2007 (Exhibit IOSKN 3). The said Constitution at Section (iii) (3) under Admission states that "Any individual who qualifies to become a member of the Association may signify by writing to the Secretary his or its desire to be a member; Upon the Council of Management being satisfied that the applicant is duly qualified to be admitted a member and had paid the appropriate due, the Secretary shall enter his or its name in the

books of the Association, and upon such entry such person shall become a member accordingly”.

[17] The Deponent Mr. Vincent Adams in his affidavit in response dated 18<sup>th</sup> March 2016 at paragraph 3 states inter alia that;

a) He was a member of the Islamic Organization of St. Kitts and Nevis Inc. and has been so since its incorporation in 2007.

b) That there was no formal application made by any individual to become a member of the Islamic Organization of St. Kitts and Nevis Inc.

c) That the requirements of the Constitution were not strictly adhered to but all members of the Organization under the old name automatically become members of the new incorporated Organization.

[18] According to the said Affidavit of Vincent Adams filed on the 12<sup>th</sup> January 2016 at paragraph 3, on the 24<sup>th</sup> December 2003, a Deed of Conveyance was made between Vaughn Tafari Atrique Tyson of Stoney Hill, Nevis and Mohammed Ali and Abdul Karim Ahmed as Trustee of the Nevis Islamic Organization in relation to a portion of land comprising Five thousand square feet situate at Bath Village, Nevis to build the Nevis Islamic Organization Community Centre.

[19] **Court's Findings & Analysis**  
**The Law**

The Companies Ordinance of St. Christopher and Nevis (1998) of the Laws of St. Christopher and Nevis states at Section 327 as follows “When used in relation to a non profit company “Member” refers to a member of the non-profit Company in accordance with the provisions of this Ordinance and the articles and by – laws of the Company’s. At Section 58 of the said Ordinance it states that “subject to any unanimous shareholder agreement the directors of a company shall... (b) direct the management of the business and affairs of the Company”.

Subject to any unanimous shareholder agreement the directors of a company shall... (b) direct the management of the business and affairs of the Company”;

At Section 63 of the Ordinance it states that “if the powers of the Directors of a company to manage the business and affairs of the company are in whole or in part restricted by the Articles of the Company, the Directors have all the rights, powers and duties of the Directors to the extent that the Articles do not restrict those powers; but the Directors are thereby relieved of their duties and liabilities to the extent that the articles restrict their powers”.

- [20] The Constitution of the Organization at Section V (i) provides that the Executive of the Association shall consist of up to three Trustees who will be the accountable body of the Association holding such things as lands, buildings and monies in Trust for the Association.

At Section V (2) the Constitution provides for the business of the Association to be managed by a Council of Management comprising of the President, Vice Presidents and three elected in accordance with the Constitution.

- [21] Mr. Vincent Adams who claims that he is acting on behalf of the Organization has not provided a scintilla of evidence, documentary or otherwise that he is a beneficiary of the Claimant Organization. In fact he admits in his Affidavit in Response that the admission processes of the Constitution have not been followed, that there has been no Council of Management who has admitted him or anyone else as a member, therefore his alleged membership of the Organization is ultra vires the Constitution and null and void.

- [22] In the circumstances I reiterate and hold the view that Mr. Adams is not a member or Secretary of the Organization as he has failed to follow the Admission Procedures of the Organization of which he professes to be a member. Consequently he cannot claim to be a bona fide beneficiary of the Claimant Organization. Further there is no evidence that any Council of Management had ever been constituted by the Organization in accordance with its Constitution.

[23] **Issue 2**

**Whether the Defendant should be removed as a Trustee for the Organization for breach of Trust and a new Trustee appointed in his stead.**

[24] Learned Counsel for the Claimant Ms Gillian Andre submits that the Court has the inherent Jurisdiction to appoint or remove a Trustee to ensure that Trusts are properly executed and referred the Court to the case of **Letterstedt vs Broers**<sup>1</sup>

[25] Learned Counsel also referred to paragraph 11 of the Defendant's Affidavit in Reply dated 3<sup>rd</sup> April 2008 where he acknowledged his absence from the Jurisdiction from 2010 to 2014 and admitted that he did not have any knowledge of the operations of the Organization during that period and was unaware of the resignation of the other Trustee.

[26] Learned Counsel for the Defendant Ms. Kurlyn Merchant submitted that the Constitution of the Organization makes no provision for the removal of Trustee and neither does **the Trust Act** Chapter 5:19 of the Laws of St. Christopher and Nevis.

[27] Learned counsel Ms. Merchant contends that the Claimant has failed to show any breaches of Trust committed by the Defendant but the Court as a Court of Equity has an inherent Jurisdiction to ensure the proper Administration of the Trust and can appoint, substitute or remove personal representatives or Trustees.

Learned Counsel referred the Court to the case of **Eileen Papone and Louise Anthony vs James Anthony**<sup>2</sup>

[28] Counsel further submitted that in exercising its Jurisdiction, the Court's guiding principle is "the welfare of the beneficiaries and the proper execution of the Trusts".

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<sup>1</sup> (1884) 9 App. Case 371  
<sup>2</sup> BVJHCV2010/0113



[29] Learned Counsel also submits that despite what appears to be friction between the parties, the defendant has continued to perform his duties as Trustee and had prepared a report exhibited as "AKA 7" in which he had set out what he had done to ensure the maintenance of the Trust property.

[30] Counsel submits that the Claimant has not shown sufficient legal basis on which the Defendant ought to be removed as Trustee.

[31] **Court's Analysis**

In the cited Privy Council case of Letterstedt vs Broers, Blackburn L.J referred to Section 1289 of Story's Equity Jurisprudence which states

"But in case of positive misconduct courts of Equity have no difficulty in interposing to remove trustees who have abused their trust, it is not indeed every mistake or regular neglect of duty or inaccuracy of conduct of trustee which will induce Courts of Equity to adopt such a course: But the acts or omissions must be such as to endanger the Trust property or to show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity".

"In exercising so delicate a Jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle that their main guide **must be the welfare of the beneficiaries**"

[32] I am guided by the words of Lord Blackburn as stated in the said Letterstedt case "If satisfied that the continuance of the Trustee would prevent the Trusts being properly executed, the Trustee might be removed. It must be always borne in mind that Trustees exist for the benefit of those to whom the creator of the Trust has given the Trust – Estate".

[33] In the case emerging out of the Eastern Caribbean Supreme Court of Eileen Papone and Louise Anthony vs James Anthony per Hanprashed- Charles J, the learned Judge reiterated that "the Court is unlikely to order removal of a Trustee unless a clear and compelling reason is shown to

representatives, Trustees and beneficiaries can be a ground for removal if shown that the friction is detrimentally impacting on the proper Administration of the Estate”.

- [34] The learned authors of Lewin on Trusts 19<sup>th</sup> Edition at paragraph 13 – 071 state under “Circumstances not justifying removal” The Court will not remove a Trustee at the mere caprice of the beneficiary without any reasonable cause shown or because the Trustee has refused from honest motives to exercise a power because dissension has arisen between the Trustee and a beneficiary or that the Trustee has transgressed the strict line of his duty, provided that there was no wilful default but merely a misunderstanding”.

See: Forster vs Davies <sup>3</sup>  
Attorney General vs Cooper’s Co <sup>4</sup>

- [35] I have reviewed the Minutes of the Annual General Meeting of the Organization dated 9<sup>th</sup> August 2014 and I note that the Meeting agreed “that the Land and property is to continue to be held in Trust by Brother Ali Mohammed and Brother Ahmed until such time as the Organization is on sound footing and has the financial resources to have the land transferred in its own name” According to the said Minutes Mr Vincent Adams was listed as being present at the meeting but there was no evidence from the Minutes that Mr Adams raised any objection to the decision of the meeting that the Defendant should continue to act as a Trustee of the Organization.
- [36] I have also reviewed the Annual General meeting report of the Organization 2014/2015 purportedly prepared by the Defendant Abdul Karim Ahmed (Exhibit AKA 7) where under Any other Business (AOB) it is outlined at paragraph 4-7 what was done to maintain and preserve the Trust property.
- [37] The Law is well settled that Trustees are to take the interest of the beneficiaries into account during the Administration of the Trust. Re Hastings Bass (deceased) Hastings and other vs Inland

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<sup>3</sup> (1881) 4 De G. FE1133

<sup>4</sup> (1812) 19 Ves Jr 187

- [37] The Law is well settled that Trustees are to take the interest of the beneficiaries into account during the Administration of the Trust. Re Hastings Bass (deceased) Hastings and other vs Infant Revenue Commissioners<sup>9</sup> is authority for the proposition that the Court will only invalidate the exercise of discretion by Trustees where it is clear that they have not acted as they did had they not failed to take into account considerations which they ought to have taken into account.
- [38] The uncontroverted evidence from the Defendant is that he always acted in the best interest of the Trust and its beneficiaries; and he has outlined his actions in his report to the Annual General Meeting (Exhibit AKA 7).
- [39] Mr Adams in his Affidavit dated the 12<sup>th</sup> January 2016 at paragraph 18 states that at a meeting on the 3<sup>rd</sup> October 2015, the election of the Office bearers was held and all positions duly noted and the Defendant was duly removed as a Trustee according to the Rules of the Constitution.
- [40] The Constitution of the Organization at Section III paragraph 8 provides for the Termination of Membership and states " Any member whose name appears three times in the arrears list and any member whose conduct in the opinion of the Association, to be declared by resolution passed at the General Meeting of a two – thirds majority of the members present and voting, and whose voting papers shall be returned upon a poll being taken, renders such member unfit to be or continue as a member shall be expelled from the Association. No such resolution shall be entertained unless at least a fortnight's notice of the same shall have been given to all members of the Association, including the member whose conduct is thereby being called into question."
- [41] On a perusal of the Minutes of the meeting of the Organization held on the 3<sup>rd</sup> October 2015, it appears that a resolution was passed to remove Abdul Karim Ahmed, the Defendant as a Trustee of the Organization. It is worth noting that the Constitution of the Organization does not make provision for the removal of a Trustee but for the Expulsion of members from the Organization.

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<sup>9</sup> [1974] 2 A.J. (R) 93

However no such action was embarked on, at that meeting, but a series of allegations were made against the Defendant and according to the said Minutes **"Members felt that Mr Abdul Karim Ahmed should no longer be a Trustee"**.

[42] Further according to Mr. Vincent Adams in his Affidavit of the 10<sup>th</sup> March 2016 at paragraph 3 "there was never a formal application made by any individual to become a member of the Islamic Organization of St. Kitts and Nevis Inc. in accordance with Section III (3) of the Constitution of the Organization filed on the 10<sup>th</sup> April 2007. The requirements of the Constitution were not strictly adhered to".

Still further in the Minutes of the Meeting of the 3<sup>rd</sup> October there is no evidence that the persons present at the meeting had complied with the requirements of the Constitution of the Organization and were in fact Members of the Islamic Organization of St. Kitts and Nevis Inc.

[43] In the circumstances, the purported actions of all the persons attending the meeting on the 3<sup>rd</sup> October 2015 are ultra vires the Constitution and their actions are deemed null and void. They have no authority to remove the Defendant as Trustee, a position which he derived under the Deed of Conveyance dated 24<sup>th</sup> December 2003.

[44] The Trust Act Chapter 5:19 of the Laws of St. Christopher and Nevis at Section 39 sets out the liability for breach of Trust by a Trustee but does not provide for the removal of Trustee. Section 31 of the said Trust Act states that **"(1) A Trustee shall in the execution of his or her duties and in the exercise of his or her powers and discretion (a) act (1) with due diligence (ii) as would a prudent person (iii) to the best of his or her ability and observe the utmost good faith"**.

[45] Notwithstanding my findings that the Deponent and other persons have acted ultra vires the Constitution that they now seek to rely on, Mr Adams the Deponent has levelled serious allegations against the Defendant as Trustee.

Mr. Adams alleges, at paragraph 12 of his Affidavit in support of the claim dated 12<sup>th</sup> January 2016, that "the Defendant had used all the funds that had been deposited to the Account by signing cheques and closed the account of the Organisation without the knowledge or permission of any of its member".

The Defendant has denied this allegation and exhibited a resolution for opening a Bank account "AKA 4" signed by himself and one Janger Williams.

[46] This allegation by Mr Adams in my opinion is relevant to and refers to the Organization and its corporate management and not to the Trust property of which the Defendant is a Trustee.

Similarly, allegations made by Mr. Adams referring to the accounting of monies of the Organization and the deficit expenditure are all issues relevant to the Organization and its corporate management and not to the Defendant as Trustee.

[47] In the circumstances, and having reviewed the Evidence, authorities and legislation on this issue, I find no merit in the Claimant's submissions on this issue and further hold that the purported removal of the Defendant as Trustee of the Organization is contrary to the decided authorities, null and void, and ultra vires the Constitution of the Organization.

[48] **Issue 3**

**Whether the Defendant Vincent Adams has the locus standi to bring the claim at Bar in the name and on behalf of the Organization.**

[49] I have already dealt with this issue under **Issue 1** and I have determined that Mr. Adams has not complied with the requirements of the Constitution to be admitted as a Member of the Organization.

Consequently Mr. Adams has no standing in the Organization and further he has provided no evidence that he is authorized by either the Trustee or the Council of Management to bring this claim on their behalf.

[50] **Issue 4**

**Whether the claim is defective and not in compliance with CPR Part 8.**

CPR Part 8:6 (1) states that the Claimant must in the Claim Form – (a) include a short description of the nature of the claim.

(b) Specify any remedy that the Claimant seeks.

CPR 8:7 states that "the Claimant must include in the Claim Form or in the Statement of Claim, a statement of all the facts on which the Claimant relies.

[51] Learned Counsel for the Claimant Ms Andro in her written submissions provides the Court with background information that was not included in the Claim Form or in the Affidavit in Support of Claim which is contrary to Part 11.9 of the CPR 2000.

[52] Learned Counsel for the Defendant Ms Merchant in her submissions submits that the Claimant has failed to specify on what legal basis it is requesting the removal of the Defendant from the position of Trustee and sets out no specific allegations of breach of Trust, fraud or dishonesty or any cause of action or a legal basis provided by statute or common Law for the removal of a Trustee.

[53] Ms Merchant contends further that the trust property is held by the Defendant and another Trustee for the Nevis Islamic Organization of Bath Village; and that this entity is unregistered and unincorporated.

[54] Counsel Ms Merchant cites the Halsbury Laws of England<sup>5</sup> where it states that "voluntary Associations which being unincorporated have no legal entity at Common Law. Associations of this kind can neither sue or be sued, nor can they authorise an officer to sue or be sued on their behalf even if their rules purport to give them power to do so."

[55] Learned Counsel Ms Merchant submits that the Claimant has failed to establish any connection between the registered incorporated entity entitled "the Nevis Islamic Organization of St. Kitts

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<sup>5</sup> Vol 22 ( 2012) 4

Kitts and Nevis Inc. and the registered corporate body entitled "the Nevis Islamic Organization of Bath Village" and this presents a further significant defect to the present claim.

[56] **Court's Analysis and Findings**

I have perused the Amended Fixed Date Claim Form dated 1<sup>st</sup> April 2016 and I have noted the relief sought by the Claimant Organization.

However the Claimant has not set out the cause of Action against the Defendant, and the legal basis for the removal of the Defendant from the position of Trustee of the Organization.

The pleadings of the Claimant did not allege as grounds for removal of the Trustee, any dishonesty or misbehaviour, and this is very relevant to the Court in deciding this issue.

[57] Still further to this deficiency in the evidence, the Claimant has not provided any evidence of the legal interrelationship if any of the Islamic Organization of St. Kitts and Nevis Inc. and The Islamic Organization of Bath Village the Claimant in this matter.

[58] I concur with Counsel for the Defendant that the Claim is defective ab initio and does not comply with CPR Part 8 and should be struck out.

I am bolstered in my view by the evidence of the Minutes of the Organization of the 5<sup>th</sup> August 2014 "AKA 3" under "Any other business", there is an entry indicating that "the land and property is to continue to be held in Trust by Brother Ali Mohammed and Brother Ahmed until such a time as the Organization is on sound footing and has the financial resources to have the land transferred in its own name".

[59] In my opinion there is uncontroverted evidence presented that the Trust Property conveyed by Deed of Conveyance dated 1<sup>st</sup> October 2003 to the Trustees of the Nevis Islamic Organization of Bath Village is still valid as there has not been a transfer of that property to any other entity or to a successor of the Nevis Islamic Organization of St. Kitts and Nevis Inc.

[60] Issue 5

Whether the Court should strike out the Fixed Date Claim Form and Affidavit of Vincent Adams dated 12<sup>th</sup> January 2016 pursuant to CPR 26.3 (b) as disclosing no reasonable grounds for bringing the claim and is an abuse of process pursuant to CPR 26.3 (1) (c).

[61] The Court's Analysis and Findings

The Law

The Learned Hon. Chief Justice of the Eastern Caribbean Supreme Court Dame Janice Periera in a recent Court of Appeal case of Royal Caribbean Cruises Ltd vs Medical Associates Ltd, Dr Martin Didier et al<sup>7</sup> reiterated the legal test for striking out a statement of case or part of it.

The Learned Chief Justice stated as follows "An Application for a party's statement of case to be struck out pursuant to CPR 26.3 (1) is decided by the Court solely on the parties pleaded cases before it. All facts pleaded in the statement of case are assumed to be true for this purpose and no additional evidence is adduced. If the Court finds that the pleadings are untenable as a matter of Law and disclose no reasonable ground for bringing or defending the claim, then the statement of case, may be struck out. Striking out however does not produce a Judgment on the merits and a party whose claim is struck out is not precluded from remedying its faults and bringing further legal proceedings in relation to the dispute."

See: Citco Global Custody NV vs Y2K Finance Inc.<sup>8</sup>

[62] The Learned Chief Justice continues; "A party's statement of case should not be struck out where the argument between the parties involves a substantial point of law which does not admit of a plain and obvious answer, or the law is in a state of development or where the strength of the case may not be clear because it has not been fully investigated. The jurisdiction to strike out should be

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<sup>7</sup> SLI/HC/VAP/2015/0004

<sup>8</sup> 8V01C/VAP/2008/0022.



used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial and its ability to strengthen its case through the process of disclosure and other Court procedures such as requests for information<sup>4</sup>.

Citco Global Custody NV vs Y2K Finance Inc., followed.

[63] This Court is also guided by the dicta in Tawney Assets Ltd vs East Pine Management et al<sup>5</sup> where it was stated "The approach of our Courts in general terms has been to apply its discretion to strike out a statement of case in exceptional cases or where it is bound to fail or where it is plain and obvious that it cannot succeed".

[64] In the Citco case Edwards J.A stated as follows

"Striking out under the English CPR r 3.4 (2) (a) which is the equivalent of our CPR 26 (3) (1) (b) is appropriate in the following instances; where the claim sets out no facts indicating what the claim is about or if its incoherent and makes no sense, or if the facts its states, even if true do not disclose a legally recognisable claim against the Defendant".

Therefore essentially a strike out application under CPR 26 (3) (1) (b) would be the appropriate procedure if a party to an action is faced with a statement of case which is plainly just bad in law.

[65] I have carefully reviewed the statement of case and the Amended Fixed Date Claim Form dated 1<sup>st</sup> April 2016 and I have great difficulty in finding that a legally recognisable claim is made out against the Defendant. The pleadings are untenable as a matter of law coupled with the fact that the Deponent Mr Vincent Adams has no locus standi to act on behalf of the Claimant Organization nor not having proved to the satisfaction of the Court that he is a member of the said Organization.

[66] Accordingly I will grant the Application of the Defendant to strike out the statement of case as it discloses no reasonable grounds for bringing the claim and it is plain and obvious that it cannot succeed.

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<sup>4</sup> BVINC VAP 2012/0007

[57] The claim was filed by way of Fixed Date Claim Form on the 12<sup>th</sup> January 2016 and the Claimant in the matter is the **Nevis Islamic Organization of St. Kitts and Nevis**. However the Deed of Conveyance which is the subject of this suit refers to the **Nevis Islamic Organization of Bath Village, Nevis**. Further the affidavit of Vincent Adams the deponent in the matter purportedly acting on behalf of the Claimant refers to and exhibits documents relating to **the Islamic Organization of Saint Kitts and Nevis**. Still further the claim makes no correlation between the Claimant Organization and the Nevis Islamic Organization of Bath Village and according to the evidence no Trust land has been conveyed to the Claimant Organization.

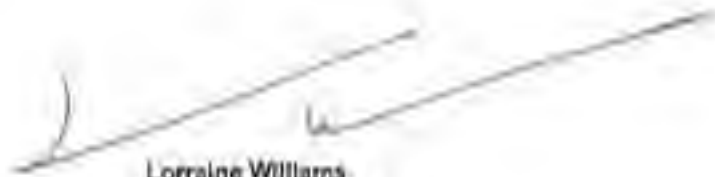
[68] In light of my findings on **Issue 5** the discussion of **Issue 6** becomes moot and I will decline to analyse it and make no finding on this Issue.

[69] **Conclusion**

The Defendant has succeeded in its application to have the Claimant's statement of case, Fixed Date Claim Form and supporting Affidavit of Vincent Adams struck out. The case is without merit for the reasons I have given and does not disclose a legally recognisable claim against the Defendant. This case fails on every Issue and the Defendant remains the Trustee of the Nevis Islamic Organization of Bath Village.

[70] Costs are to be assessed if not agreed upon in accordance with part 65.5 of the CPR 2000.

[71] I thank both counsel on both sides for their research and helpful submissions.



Lorraine Williams  
High Court Judge.